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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,314	02/24/2004	Darko Pervan	033462-044	2313

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BUCHANAN, INGERSOLL & ROONEY PC  
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EXAMINER
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LAUX, JESSICA L

ART UNIT	PAPER NUMBER
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3635

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/708,314

Applicant(s)

PERVAN, DARKO

Examiner

Jessica Laux

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 8,9 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 06/24/04; 06/30/05; 01/30/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7 and 10-12, drawn to floorboards, classified in class 52, subclass 578.
- II. Claims 8-9 and 13, drawn to a method of manufacturing floorboards, classified in class 29, subclass 897.32.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as by milling tools that require angling.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Boone on 01/26/2007 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-7 and 10-12. Affirmation of this election must be made by applicant in replying to this

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Office action. Claims 8-9 and 13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: line 2 recites "floorare". It is unclear what is meant. Examiner suggests changing to "floorboards are". Appropriate correction is required.

Claim 7 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claim is not further limiting as the independent claim 1 recites, "wherein the surface layer comprises flexible resilient fibers".

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 5-7, 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Dahlberg et al (3120083).

Regarding claims 1 and 10: Dahlberg discloses floorboards comprising a surface layer (11) and a core (14), for making a floating flooring, which floor are mechanical lockable and which along their edge portions have pairs of opposing connectors for locking similar, adjoining floorboards to each other both vertically and horizontally (Col. 1, lines 15-22; Col. 2, lines 32-36; and figure 3, wherein the surface layer comprises flexible resilient fibers (pile fabric; Col. 2, lines 62-63).

Regarding claim 2: Floorboards as claimed in claim 1, wherein the core of the floorboard contains wood fibers (Col. 3, lines 2-3).

Regarding claim 5: Floorboards as claimed in claim 1, wherein the floorboards are rectangular or square (figure 3) and that two opposite sides can be joined by inward angling, whereby upper adjoining joint edge portions are in contact with each other (Col. 4, lines 36-45; where the tiles can be joined by sliding the tiles together by inward angling and the upper edges are in contact).

Regarding claim 6: Floorboards as claimed in claim 5, wherein the upper adjoining joint edge portions of the floorboards are compressible and can be changed in shape in connection with joining (where the upper surface is a pile carpet which is compressible).

Regarding claim 7: Floorboards as claimed in claim 1, wherein the surface layer consists of flexible resilient fibers (Col. 2, lines 62-63).

Regarding claims 11-12: The floorboard as claimed in claim 10, wherein a second pair of opposing edge portions has pairs of opposing connectors for locking said floorboard to a similar, adjoining floorboard vertically and/or horizontally (Col. 1, lines 15-22; Col. 2, lines 32-36; and figure 3).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahlberg (3120083).

Regarding claim 3: Dahlberg discloses the floorboards as claimed in claim 1 above, but does not expressly disclose that the surface layer is made of needle felt. Instead Dahlberg discloses a pile carpet. However, it is well known in the industry to use needle felt for carpet pile, furthermore applicant has not disclosed that using a needle felt, rather than any other type of carpet, provides an advantage or solves a problem. Applicant also discloses in paragraph [0022] that any fiber-based surface is acceptable. Therefore it is an obvious matter of design choice to use needle felt as the surface as one of ordinary skill in the art would know to do. Therefore this feature does not patentably distinguish over the prior art of Dahlberg.

Regarding claim 4: Dahlberg discloses floorboards as claimed in claim 1 above, but does not disclose that the surface layer has a density below 400 kg/m<sup>3</sup>. However, Dahlberg discloses that the surface layer is a carpet, which is equivalent to the claimed surface layer and therefore has a density below 400 kg/m<sup>3</sup> thereby significantly lowering the sound level.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JL

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02/21/2007

  
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PRIMARY EXAMINER  
GROUP 3400 3635